

ORIGINAL

Chiswick

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

FILED/ACCEPTED

In re Applications of:

NOV 17 2008

Nevada Public Radio



Federal Communications Commission
Office of the Secretary

Application for New Noncommercial
Educational FM Station, Channel 207
Elko, Nevada

File No. BNPED-20071022BJX

Nevada-Utah Conference of
Seventh-Day Adventists

Application for New Noncommercial
Educational FM Station, Channel 207

File No. BNPED-20071016AJJ

Elko, Nevada

To: Marlene Dortch, Secretary
Attn: Chief, Audio Division, Media Bureau

JOINT REQUEST FOR APPROVAL OF SETTLEMENT

NCE MX GROUP # 183

Nevada Public Radio ("NVPR") and Nevada-Utah Conference of Seventh-Day Adventists ("NUC") (each a "Party" and, collectively, the "Parties"), by counsel, pursuant to Section 73.3525 of the Commission's Rules, hereby petition for FCC approval of the attached Settlement Agreement. As discussed below, the Agreement will result in a universal settlement of noncommercial educational FM MX Group # 183, thereby expediting service to the public and saving FCC resources and the resources of the Parties.

In support thereof, the following is shown:

1. NVPR and NUC are mutually exclusive applicants for a new noncommercial educational radio station at Elko, Nevada. In order to resolve this proceeding, the Parties have reached a settlement agreement that will result in the universal settlement of the MX Group.

2. Pursuant to the settlement agreement, NUC will dismiss its application with prejudice in exchange for certain monetary consideration to cover legitimate and prudent expenses associated with the preparation and filing of its application.

3. The Parties therefore respectfully request that the FCC: (1) approve the Settlement Agreement appended hereto; (2) contingent upon the final grant of NVPR's Application, dismiss NUC's application for a new noncommercial educational radio station on Channel 207 at Elko, Nevada (FCC File No. BNPED-20071016AJJ) (the "NUC Application"); and (3) grant NVPR's application for a new noncommercial educational radio station on Channel 207 at Elko, Nevada (FCC File No. BNPED-20071022BJX) (the "NVPR Application").

4. Attached hereto as Exhibit A is a Settlement Agreement between NVPR and NUC. The Agreement is executed by both parties, and its effectiveness is expressly conditioned upon prior FCC approval.

5. The Parties agree that, absent a settlement, the resolution the MX is likely to be protracted, expensive, subject to administrative delay and uncertainty, and a burden upon the Commission's and Parties' resources, as well as delaying new noncommercial radio service to the community of license.

6. Attached hereto as Exhibits B and C are the necessary certifications from each Party pursuant to Section 73.3525 of the Commission's rules.

7. Approval of the attached Settlement Agreements will serve the public interest, convenience, and necessity and such approval will expedite the initiation of new noncommercial radio service to the community of Elko, Nevada. In addition, approval of the attached Settlement Agreement will conserve scarce resources of the Parties (both of which are noncommercial educational applicants) and of the FCC.

8. Thus, this Settlement Agreement is consistent with Section 307(b) of the Communications Act of 1934, as amended, and will serve the public interest.

9. For the foregoing reasons, the Parties respectfully request that the FCC approve the attached Settlement Agreement and take the actions set forth in Paragraph 3 above.

Respectfully submitted,

NEVADA PUBLIC RADIO

By: Barry Persh

Margaret L. Miller
Barry S. Persh

DOW LOHNES PLLC

1200 New Hampshire Ave., N.W.
Washington, DC 20036-6802
202-776-2914
Its Attorneys

NEVADA-UTAH CONFERENCE OF
SEVENTH-DAY ADVENTISTS

By: Donald E. Martin

Donald E. Martin

DONALD E. MARTIN, P.C.

P.O. Box 8433
Falls Church, Virginia 22041
703-642-2344
Its Attorney

Dated: November 17, 2008

EXHIBIT A

Settlement Agreement

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("*Agreement*") is entered into this 14th day of November, 2008, by and between Nevada-Utah Conference of Seventh-Day Adventists ("*NUC*") and Nevada Public Radio ("*NVPR*"). NUC and NVPR may each be referred to individually as a "*Party*" and collectively, the "*Parties*".

WITNESSETH:

WHEREAS, NUC has pending before the Federal Communications Commission ("*FCC*") an application for a construction permit for a new noncommercial educational FM broadcast station to operate on Channel 207 in Elko, Nevada (FCC File No. BNPED-20071016AJJ; Facility ID # 175329), and NVPR has pending before the FCC an application for a new noncommercial educational FM broadcast station to operate on Channel 207 in Elko, Nevada (FCC File No. BNPED-20071022BJX; Facility ID # 174342) (each an "*Application*" collectively, the "*Applications*");

WHEREAS, the Applications are mutually exclusive with each other, and only one Application may be granted by the FCC;

WHEREAS, the FCC adopted a point system to select among mutually exclusive applications for noncommercial educational broadcast stations; and

WHEREAS, the Parties believe that a settlement upon the terms set forth in this Agreement will serve the public interest by preventing the diversion of their resources and those of the FCC to the cost of further processing and evaluation of the competing Applications and by permitting the prompt initiation of a new noncommercial educational FM service to Elko, Nevada.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, conditions, representations and warranties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties to this Agreement hereby agree as follows:

1. **Dismissal of Application.** NUC requests the dismissal with prejudice of its Elko, Nevada Application (contingent upon FCC approval of this Agreement and grant of NVPR's application) which will remove the conflict between the Applications.

2. **Consideration.** Within fourteen (14) days of the FCC taking action to grant NVPR's Application, NVPR shall pay to NUC the sum of Four Thousand Dollars (\$4,000.00) by cashier's check, or other mutually acceptable form of payment. This sum of Four Thousand Dollars (\$4,000.00) represents NUC's legitimate and prudent expenses associated with the preparation and filing of its Application, as provided in Section 73.3525(a)(3) of the FCC Rules.

3. **Request for FCC Consent.** Within seven (7) days after execution of this Agreement, the Parties shall jointly file and prosecute a Joint Request for Approval of Settlement Agreement (the "*Joint Request*") as required by Section 73.3525 of the Commission's rules,

requesting that the FCC issue an order or orders: (i) granting the Joint Request; (ii) approving this Agreement; (iii) dismissing NUC's Application; and (iv) granting NVPR's Application. The Parties shall in good faith pursue prompt approval by the FCC of this Joint Request and promptly file any other supporting documentation that may be required or requested by the FCC, and shall thereafter in good faith prosecute the Parties' respective obligations under this Agreement. Neither Party shall take any action adverse to this Agreement, the Joint Request, or NVPR's Application. Notwithstanding the foregoing, in the event that the FCC dismisses NUC's application before the grant of NVPR's application becomes final, and such finality has not been achieved as of the date a Petition for Reconsideration of such dismissal would be due to be filed with the Commission, then and only then, NUC may, consistent with this Agreement, seek reconsideration of the dismissal and reinstatement of its application. In that event, NUC's Petition for Reconsideration shall state that the instant Agreement remains in effect, that the submission of the Petition merely serves to preserve NUC's rights in the event that NVPR's application is not granted, and that NUC acknowledges that its Petition becomes moot upon finality of the grant of NVPR's application, i.e. when the time has expired for seeking reconsideration or administrative or judicial review of that grant and no request for such reconsideration or review is pending. Upon such finality, NUC shall withdraw its Petition for Reconsideration.

4. **FCC Consent and Action.** The obligations of the Parties under this Agreement are expressly conditioned upon the FCC taking action approving this Agreement in its entirety, granting NVPR's Application and dismissing NUC's Application.

5. **Documentation of Expenses.** NUC represents and warrants that it has incurred legitimate and prudent expenses of Four Thousand Dollars (\$4,000.00) related to its Application. NUC will provide to NVPR as soon as possible, and in no event later than one (1) day after the execution of this Agreement, documentation of its legitimate and prudent expenses associated with the preparation and filing of its Application.

6. **Authorization and Binding Obligation.** The Parties hereto represent to one another that they each have the power and authority to enter into and carry out this Agreement and that this Agreement constitutes a valid and binding obligation of each of them in accordance with its terms.

7. **Termination.** This Agreement may be terminated by mutual written agreement of the Parties. This Agreement shall terminate if the FCC denies or designates for evidentiary hearing the Joint Settlement Request and such denial becomes a Final Action.

8. **Notices.** All notices, requests, demands and other communications relating to this Agreement shall be in writing and shall be sent by first class, certified or registered mail, return receipt requested, postage prepaid and, pending the designation of another address, addressed as follows:

If to NUC:

Nevada-Utah Conference of Seventh-Day Adventists
1095 East Taylor Street

Reno, NN 89502

With a copy to (which does not constitute notice):

Donald E. Martin, Esq.
Donald E. Martin, P.C.
P.O. Box 8433
Falls Church, VA 22041

If to NVPR:

Nevada Public Radio
1289 S. Torrey Pines Drive
Las Vegas, NV 89146
Attn: Phil Burger

With a copy to (which does not constitute Notice):

Barry S. Persh, Esq.
Dow, Lohnes PLLC
1200 New Hampshire Ave., N.W., Suite 800
Washington, DC 20036

9. **Entire Agreement.** This Agreement constitutes the entire understanding of the Parties, and no other consideration, action or forbearance is contemplated or relied upon by them. This Agreement may not be amended or modified except by a writing signed by both Parties.

10. **Enforcement.** Should the Parties engage in litigation arising out of this Agreement, the prevailing party in such litigation shall be entitled to reasonable attorneys' fees and costs as shall be determined by the court. The Parties recognize that this Agreement confers a unique benefit, the loss of which cannot be compensated for through monetary damages. Thus, in the event of a breach of this Agreement, the Parties acknowledge that specific performance or other equitable relief would be an appropriate remedy, and agree to waive any defense that there is an adequate remedy at law for breach of this Agreement.

11. **Assignment and Binding Effect.** This Agreement shall inure to the benefit of, and shall be binding upon, the Parties hereto and their heirs, successors, executors, legal representatives and assigns, provided however that neither Party may voluntarily assign this Agreement without the express written consent of the other Party.

12. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Nevada without application of conflicts of laws principles. The Parties agree to accept the jurisdiction of the courts of the State of Nevada for the resolution of any disputes under this Agreement.

13. Headings. The headings herein are included for ease of reference only and shall not control or affect the meaning or construction of the provisions of this Agreement.

14. Counterparts. This Agreement may be executed in one or more counterparts and shall be binding when it has been executed by each of the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement or have caused this Agreement to be executed on their behalf to be effective as of the date first set forth above.

NEVADA-UTAH CONFERENCE OF
SEVENTH-DAY ADVENTISTS

By: 

Print Name: Larry Lakes

Its: President

NEVADA PUBLIC RADIO

By: _____

Print Name: _____

Its: _____

IN WITNESS WHEREOF, the Parties have executed this Agreement or have caused this Agreement to be executed on their behalf to be effective as of the date first set forth above.

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Print Name: _____

NBS

E¹⁰⁷: Phil Breen

Print Name: Phil Burger

11/7/2008

EXHIBIT B

NVPR Declaration

DECLARATION

Nevada Public Radio ("NVPR") hereby declares as follows:

1. NVPR has filed with the Federal Communications Commission (the "FCC") an application for a new noncommercial FM station on Channel 207 in Elko, Nevada (File No. BNPED-20071022B) ☒ (the "NVPR Application").
2. The NVPR Application is mutually exclusive with the application of Nevada-Utah Conference of Seventh-Day Adventists ("NUC") for a new noncommercial FM station on Channel 207 in Elko, Nevada (File No. BNPED-20071016AJ) (the "NUC Application").
3. The NVPR Application was not filed for the purpose of reaching or carrying out a settlement agreement.
4. NVPR has entered into a settlement agreement (the "Agreement") with NUC. As set forth in the Agreement, NUC has agreed to request that the FCC dismiss the NUC Application, and NVPR has agreed to pay NUC the sum of Four Thousand Dollars and No Cents (\$4,000.00) to reimburse legitimate and prudent expenses associated with the preparation and filing of the NUC Application, contingent on FCC approval of the Agreement.
5. Other than as set forth in the Agreement, neither NVPR nor any of its principals have paid, received, promised, or been promised any money or other consideration in connection with the proposed settlement.
6. Approval of the Agreement will serve the public interest by conserving substantial time and resources of the FCC and the parties and by hastening the initiation of new noncommercial educational FM radio service to the community of Elko, Nevada.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on

Date: 11/7/2008

By: Phil Burger

Name: Phil Burger

Title: Dir Broadcast Ops

EXHIBIT C

NUC Declaration

DECLARATION

Nevada-Utah Conference of Seventh-Day Adventists ("NUC") hereby declares as follows:

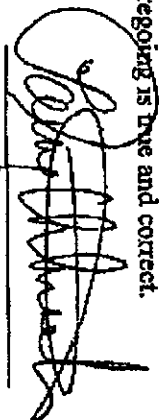
1. NUC has filed with the Federal Communications Commission (the "FCC") an application for a new noncommercial FM station on Channel 207 in Elko, Nevada (File No. BNPED-20071016AJ) (the "NUC Application").
2. The NUC Application is mutually exclusive with the application of Nevada Public Radio ("NVPB") for a new noncommercial FM station on Channel 207 in Elko, Nevada (File No. BNPED-20071022BJX) (the "NVPB Application").
3. The NUC Application was not filed for the purpose of reaching or carrying out a settlement agreement.
4. NUC has entered into a settlement agreement (the "Agreement") with NVPB. As set forth in the Agreement, NUC has agreed to request that the FCC dismiss the NUC Application, and NVPB has agreed to pay NUC the sum of Four Thousand Dollars and No Cents (\$4,000.00) to reimburse legitimate and prudent expenses associated with the preparation and filing of the NUC Application, contingent on FCC approval of the Agreement. An itemized accounting of the expenses for which NUC seeks reimbursement is attached.
5. Other than as set forth in the Agreement, neither NUC nor any of its principals have paid, received, promised, or been promised any money or other consideration in connection with the proposed settlement.
6. Approval of the Agreement will serve the public interest by conserving substantial time and resources of the FCC and the parties and by hastening the initiation of new noncommercial educational FM radio service to the community of Elko, Nevada.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on

Date: 11/14/08

By:



Name: Larry Underseker

Title: President

Nevada-Utah Conference of Seventh Day Adventists
 1095 East Taylor Street
 Reno, NV 89502

INVOICE

Bill to: Phil Burger
 Name Nevada Public Radio
 Address 1289 South Torrey Pines
 City Las Vegas State NV ZIP 89146
 Phone

Misc
 Date 9/19/2008
 Order No. NCE Elko
 Rep JOB

Qty	Description	Unit Price	TOTAL
	NCE Filing, Settlement, Technical Services - Elko, NV (FID 175329) Services rendered by Christian Community Broadcasters 284 Louie Lane, Canton, GA 30115	\$4,000	\$ 4,000.00
	Filing Services: Frequency search and site selection. Detailed engineering studies related to interference - FM, TV, and Mexico Population analyses for current first and second Aural Service Filing of Form 340 on a timely basis including all studies, exhibits, and maps		
	Settlement Services: Competitive MX analyses Negotiation with Nevada Public Radio's counsel via phone and emails Approval of settlement documents		

Payment
 Comments Flat fee for services described
 (not billed on hourly basis)

SubTotal	\$ 4,000.00
Shipping	
Tax	
Credit	
TOTAL	\$ 4,000.00

Office
 Use
 Only

Phone: (678) 880-0676

Email: JohnBroomall@yahoo.com

CERTIFICATE OF SERVICE

I, Cynthia Porter, hereby certify that a copy of the foregoing "Joint Request for

Approval of Settlement" was served this 17th day of November 2008, by first class United States mail, postage prepaid, or by courier, upon the following:

Donald E. Martin, Esq.
Donald E. Martin, P.C.
P.O. Box 8433
Falls Church, Virginia 22041

Irene Bleiweiss*
Audio Division, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

James Bradshaw*
Audio Division, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Liz Robinson*
Audio Division, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

* via courier


Cynthia Porter